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12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
15

16 CLINTON BROWN,
17 Plaintiff,
18 v.

19 CLARK R. TAYLOR, AICP, THE
LOS ANGELES COUNTY
20 DEPARTMENT OF REGIONAL
PLANNING,
21 Defendant.
22

Case No. 2:22-cv-09203-MEMF-KS

**DEFENDANT'S REPLY ISO
MOTION FOR SUMMARY
JUDGMENT**

Filed concurrently with:
1) *Defendant's Reply to Plaintiff's
Statement of Disputed Material
Facts; and*
2) *Defendant's Evidentiary
Objections to Plaintiff's Statement
of Disputed Material Facts and
Exhibits*

Judge: Hon. Karen L. Stevenson

Assigned to:
Hon. Maame Ewusi-Mensah Frimpong
Courtroom "8B"

Magistrate Judge Karen L. Stevenson
Courtroom "580"

28

Memorandum of Points and Authorities

In spite of the fact that Plaintiff Clinton Brown ("Plaintiff" or "Brown") had *nine weeks* to oppose Defendant's Motion for Summary Judgment, instead of the statutory two weeks, he has filed an Opposition to Defendant's Motion for Summary Judgment (Dkt. No. 118) ("Opposition") which contains little more than hyperbole. But more important, the Opposition is almost completely bereft¹ of any reference to Plaintiff's Exhibits P1-P10 (Dkt. No. 115-2 to 115-11) which allegedly support his "factual" claims. The Ninth Circuit, in *Southern California Gas Company v. City of Santa Ana*, 336 F.3d 885, 889 (9th Cir. 2003) states that Plaintiff was obligated to identify the portions of the record that support his "factual" contentions:

A party opposing summary judgment must direct our attention to specific, triable facts. See *Cal. Practice Guide: Federal Civil Procedure Before Trial* § 14:101.1, at 14-24.2. General references without page or line numbers are not sufficiently specific. *Id.* (citing *Nissho-Iwai Am. Corp. v. Kline*, 845 F.2d 1300,1307 (5th Cir. 1988)); see also *Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026,1030 (9th Cir.2001) (citing similar holdings in the Fifth, Sixth, Seventh, and Tenth Circuits); *Forsberg v. Pac. Northwest Bell Tel. Co.*, 840 F.2d 1409, 1418 (9th Cir.1988) ("The **district judge is not required to comb the record to find some reason to deny a motion for summary judgment.**"). [Emphasis added.]

Further, it is well settled in the Ninth Circuit that "legal memoranda and oral argument are not evidence and do not create issues of fact capable of defeating an otherwise valid motion for summary judgment." (*British Airways Bd. v. Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978), cert, denied, 440 U.S. 981, 99 S.Ct. 1790, 60

¹ Plaintiff makes a single reference to Dkt. No. 115-7 purporting that a comprehensive history of the Property is contained in pages 54-68. However, the Subject Property (Tract No. 33128, Lot 3) is mentioned only once stating that it was an "open-space lot." (Dkt. No. 115-7 at 57.) The history focuses on Lot 1 (APN 2064-005-009) and Lot 2 (APN 2064-005-010) of Tract No. 33128 with each Lot having a separate APN and being unrelated to this lawsuit.

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1 L.Ed.2d 241 (1979).) Thus, all of the "factual" assertions in Plaintiffs Opposition,
 2 which do not cite to any supporting evidence, cannot be used to create an issue of fact
 3 to defeat Defendant's summary judgment motion. When Plaintiff's Opposition is
 4 stripped of all non-referenced "facts," there is no doubt that Plaintiff has not created
 5 an issue of fact to defeat the summary judgment motion. In fact, as will be
 6 demonstrated in Defendant's reply to Plaintiff's "legal" arguments, even if the Court
 7 could consider Plaintiff's unsupported facts, his Opposition does not defeat the
 8 Summary Judgement Motion. Moreover "[s]ummary judgment procedure is properly
 9 regarded not as a disfavored procedural shortcut, but rather as an integral part of the
 10 Federal Rules as a whole, which are designed 'to secure the just, speedy and
 11 inexpensive determination of every action.'" (*Tate v. Lau*, 865 F.Supp. 681, 686
 12 (D,Nev. 1994) citing *Celotex Corp.*, 477 U.S. at 327, 106 S.Ct. at 2555.)

13 Further, the "Discussion" portion of Plaintiff's Opposition consists of dozens of
 14 cites, which have no relation, whatsoever, to the facts in this case. Plaintiff never
 15 presents any competent evidence to dispute Defendant's simple assertions that Clinton
 16 Brown, as an individual does not own "27250 Agoura Road" an unincorporated parcel
 17 of land whose Assessor Parcel Number ("APN") is 2064-005-011 described as "LOT
 18 3 in TRACT NO. 33128" (hereinafter "Subject Property"), and without ownership
 19 Brown lacks standing to bring this lawsuit. (*See* Dkt. No. 82-2 Exhibit 1 to Motion
 20 for Summary Judgment ("MSJ"), Request for Judicial Notice #1 ("RJN"), Quitclaim
 21 Grant Deed (hereinafter "Exh. 1 Quitclaim Deed"); and Dkt. No. 82-3 Exhibit 2 to
 22 MSJ, RJN #2, Grant Deed (hereinafter "Exh. 2 Grant Deed").) Plaintiff also does not
 23 present any competent evidence to show that he had a cognizable property right to
 24 build a ground mounted utility-scale solar facilities ("solar farm") on the Subject
 25 Property. Plaintiff does not present any admissible evidence to show that a Takings
 26 occurred under the multi-factor *Penn Central* Analysis. (*See Penn Central*
 27 *Transportation Co. v. New York City*, 438 U. S. 104, 124 (1978) ("Penn Central").)

28 Plaintiff's Statement of Genuine Disputes of Material Facts ("PDMF") submits

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1 inadmissible evidence in the form of Exhibits P1-P10/RJN. (Dkt. No. 115-2 to 115-
2 11.) Plaintiff's PDMF Exhibits P1-P10/RJN ("PDMF Exhibits") are not supported by
3 any affidavits, declarations, or answers to discovery. Moreover, all of the PDMF
4 Exhibits lack foundation and are *not authenticated*, and thereby, fail to meet the
5 standard of Fed. R. Evid. 901 ("Rule 901"). (See Fed. R. Evid. 901; Defendant's
6 Evidentiary Objection Nos.1-10.) Plaintiff fails to explain under penalty of perjury
7 what each PDMF Exhibit is, what they mean, where the document was obtained, and
8 that they are true and correct copies.

9 PDMF Exhibits also fail to meet the standard of Fed. R. Evid. 201(b) ("Rule
10 201"), which allows courts to take judicial notice of facts that "(1) [are] generally
11 known within the trial court's territorial jurisdiction; or (2) can be accurately and
12 readily determined from sources whose accuracy cannot reasonably be questioned."
13 The PDMF Exhibits are not generally known within the Court's territorial jurisdiction,
14 nor can they be accurately and readily determined from sources whose accuracy
15 cannot reasonably be questioned. Outside of an Exhibit List which provides a title
16 for each of the PDMF Exhibits, Plaintiff fails to identify the source of where each
17 exhibit originates. (See Dkt. No. 115 and Dkt No. 115-1.) As such, Plaintiff's PDMF
18 does not present any competent evidence to support disputing the uncontroverted
19 material facts set forth by Defendant. Additionally, Plaintiff even fails to sign the
20 PDMF (See Dkt. No. 117.)

21 Plaintiff's Opposition, while full of conjecture, fails to set forth a genuine
22 dispute as to any material fact. (Fed. R. Civ. Proc. § 56(a), (c)(1).) Moreover, the
23 Opposition entirely omits arguments and evidence as to ownership of the Subject
24 Property and the fact that Plaintiff did not have reasonable investor expectations to
25 build a solar farm on the Subject Property. Even though Plaintiff has failed to
26 designate specific facts showing there is a genuine issue for trial Defendant will
27 address Plaintiff's "legal" arguments, demonstrating that they do nothing to defeat the
28 Motion for Summary Judgment.

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I. PLAINTIFF'S OPPOSITION IS UNTIMELY AND SHOULD NOT BE CONSIDERED.

As a preliminary matter, Plaintiff's Opposition is untimely and should not be considered. On October 19, 2023, the Honorable Magistrate Judge Karen L. Stevenson issued a Notice re: Defendant's Motion for Summary Judgment and Order Setting Briefing Schedule ("MSJO"). (Dkt. No. 83.) The MSJO provided that Plaintiff shall file and serve his Opposition to Defendants' Summary Judgment Motion and Local Rule 56-2 Statement of Genuine Issues no later than **November 20, 2023.** (*Id.* at 1.) The MSJO further provided that "**Plaintiff is expressly cautioned that his failure to file and serve a timely Opposition to Defendants' Summary Judgment Motion may result in the granting of the Summary Judgment Motion.**" (emphasis in original) (*Id.* at 4.) Plaintiff filed his Opposition to Defendant's Motion for Summary Judgment (Dkt. No. 118) a month past the MSJO deadline, on December 27, 2023, and filed his Statement of Genuine Disputes of Material Fact by Nonmoving Party on Christmas, December 25, 2023 (Dkt. No. 115). Plaintiff has not presented any good cause or legal basis for filing his Opposition and PDMF over a month past the MSJO deadline. Plaintiff continues to engage in gamesmanship and ignore his obligations under the applicable Federal Rules, Local Rules, Judge's Procedures, and/or Orders whenever it suits him.

Accordingly, Plaintiff's Opposition is untimely and in violation of the Court's MSJO and therefore should not be considered.

II. PLAINTIFF CONTINUES TO RE-RAISE PREVIOUSLY ADJUDICATED ISSUES.

There are several issues that have already been determined by this Court that Plaintiff attempts to re-raise. With brevity, Defendant addresses these briefly.

Plaintiff's issue with the Motion for Summary Judgment being heard by the Honorable Magistrate Karen L. Stevenson (Dkt. No. 118 at 1-3) has already been addressed and explained by the Honorable Maame Ewusi-Mensah Frimpong in the

1 minute order recounting the status conference regarding the issue. (*See* Dkt. No. 104.)

2 Similarly, Plaintiff disputes that his service of the Complaint on Defendant's
 3 service was improper (Dkt. No. 118 at 10-12), however, this Court determined on
 4 February 21, 2023, that Brown's attempt at service was improper stating: "On
 5 December 20, 2022, Plaintiff filed a Request for Clerk to Issue Summons on
 6 Complaint. (Dkt. No. 16.) However, instead of waiting for the Clerk to issue the
 7 summons, Plaintiff apparently used his own copy of a summons form and served
 8 Defendant with that form and the Complaint. (Dkt. No. 22.) That summons form was
 9 defective under the Federal Rules of Civil Procedure." (Dkt. No. 27)

10 Lastly, Plaintiff asserts that the Defendant's affirmative defenses fail as a matter
 11 of law (Dkt. No. 118 at 12-13), however once again, this Court has already determined
 12 that Defendant's affirmative defenses do not fail as a matter of law when denying
 13 Plaintiff's Motion to Strike Defendant's affirmative defenses. (Dkt. No. 53.)

14 **III. PLAINTIFF CANNOT ASSERT A CONSTITUTIONAL VIOLATION**
 15 **BECAUSE HE DOES NOT OWN THE SUBJECT PROPERTY, AND**
 16 **THEREFORE, LACKS STANDING TO BRING THIS LAWSUIT.**

17 Plaintiff does not address his lack of standing in his Opposition. Standing is a
 18 basic legal principle of federal jurisdiction found in the Constitution. (U.S. Const. art.
 19 III, § 2; *Get Outdoors II, LLC v. City of San Diego*, 381 F. Supp. 2d 1250, 1258
 20 (2005).) Here, Brown does not present any competent evidence to show that he is the
 21 owner of the Subject Property. Conversely, Defendant has presented the recorded
 22 grant deeds of the Subject Property that irrefutably show that Atlas, LLC owned the
 23 Subject Property from November 12, 2020 to January 28, 2022 and Atlas, LLC and
 24 Steve Weera Tonasut, Trustee of the Tonasut Family Trust owned the Subject
 25 Property from January 28, 2022 to present. (*See* Dkt No. 82-2 Exh. 1 Quitclaim Deed;
 26 and Dkt. No. 82-3 Exh. 2 Grant Deed.) Plaintiff does not present any competent
 27 evidence that he is a member of Atlas, LLC or Steve Weera Tonasut Family Trust.
 28 Regardless, even if Plaintiff had majority ownership and control over Atlas, LLC, that

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1 would be irrelevant, as "a member or assignee has no interest in specific limited
 2 liability company property." (*Cal. Corp. Code* § 17300.)

3 Even if Brown argued that he could substitute in Atlas, LLC as Plaintiff (which
 4 he has not) without prejudice, that would not address the point that a shareholder or
 5 member bringing a derivative action must meet certain procedural requirements.
 6 (Fed. R. Civ. P. 23.1; *Sax v. World Wide Press*, 809 F.2d 610, 613 (9th Cir. 1987).) It
 7 is undisputed that Plaintiff's Complaint fails to comply with Fed. R. Civ. Proc. 23.1's
 8 procedural requirements. Plaintiff's Complaint is unverified as Brown did not sign
 9 the Complaint nor did he declare that under penalty of perjury the allegations in the
 10 Complaint were true. (Dkt. No. 1 at 7.) As previously stated in Defendant's Motion
 11 for Summary Judgment, Plaintiff's Complaint: is not verified, fails to allege LLC
 12 membership, fails to allege the action is not collusive, and fails to allege any effort to
 13 obtain relief from the LLC. There is no genuine dispute that Plaintiff's Complaint fails
 14 under Fed. R. Civ. Proc. 23.1. Plaintiff's failure to comply with the stringent federal
 15 pleading requirements cannot be cured by a mere substitution.

16 Plaintiff's Opposition does not present any admissible evidence that disputes
 17 the Subject Property is not owned by Plaintiff Clinton Brown. Plaintiff does not
 18 present any competent evidence of any conveyance of the deed of the Subject Property
 19 to himself in an individual capacity. Plaintiff attempts to submit PDMF Exhibit
 20 P1/RJN to create a genuine dispute that he is the owner of the Subject Property. (*See*
 21 Dkt. No. 115-2.) PDMF Exhibit P1 is an unauthenticated document dated June 25,
 22 2020 that purportedly lists Plaintiff as the buyer of the Subject Property. *Id.* Plaintiff
 23 provides no explanation of what this document is purported to be, no admissible
 24 evidence that the conditions to this document were fulfilled, and most importantly no
 25 evidence that the deed for the Subject Property was ever conveyed from the previous
 26 owner of Subject Property (Tax Deed Enterprises, LLC) to Clinton Brown, as an
 27 individual. (*See* Dkt. No. 115; Dkt. No. 115-2.) In sum, *Plaintiff lacks standing and*
 28 *the Court lacks subject matter jurisdiction to hear Brown's sole cause of action.*

IV. PLAINTIFF FAILS TO ESTABLISH ANY GENUINE ISSUES OF MATERIAL FACT AS TO PLAINTIFF'S TAKINGS CLAIM.

Plaintiff fails to raise genuine issues of material fact that he had a cognizable property right to build a solar farm on the Subject Property (and the rejection of his solar farm application constituted a Taking). Plaintiff in his Opposition argues that "[Brown] has stated a claim under the Takings Clause is entitled to Just Compensation" (Dkt. No. 118 at 13), but provides no material fact or admissible evidence to support this conclusory statement. Plaintiff's argument confusingly morphs from disputing the fact that he had a no cognizable property right to build a solar farm on the Subject Property and therefore no reasonable investment-backed expectations to the fact that he has a right to challenge any government-imposed restriction. (*Id.*)

Plaintiff's Opposition asserts new confusing arguments, which misstate the law and fail to raise any genuine issues of material fact. The first is that under "'Unconstitutional Conditions,' the Government may not require a person to give up a constitutional right in exchange for a discretionary benefit conferred by the government where the benefit sought has little or no relationship to the property." (*Id.*) Plaintiff provides no admissible evidence that the Government *required* the prior owner of the Subject Property to give up any rights in the Subject Property. Plaintiff questions the legality of the dedication from the prior owner of the Subject Property to the County of Los Angeles without providing a single material fact or admissible document in support that the dedication was not valid. Conversely, Defendant has provided evidence that the dedication of rights to prohibit residential and/or commercial structures (such as Brown's contemplated solar farm) on the Subject Property to the County of Los Angeles was pursuant to an arms-length negotiated development agreement between the County and the prior landowners of the Subject Property. (*See* Dkt. No. 82-7 Exhibit 6 to MSJ, RJN #6, Development Agreement.)

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1 Plaintiff also fails to raise genuine issues of material fact that there was no
 2 regulatory taking because he fails to include any evidence supporting his claims
 3 beyond conclusory, unsupported assertions. A party cannot create a genuine issue of
 4 material fact simply by making assertions in its legal memoranda. (*In re Ahaza*
 5 *Systems, Inc.* 482 F.3d 1118, 1112 n.1 (9th Cir. 2007) (finding counsel's arguments
 6 and statements are not evidence and do not create material fact issues capable of
 7 defeating otherwise valid motion).)

8 As to the first factor regarding the economic impact of the denial of Plaintiff's
 9 application for a ground-mounted-utility-scale solar facilities by Defendant (on
 10 October 21, 2021), Plaintiff states the "Government's denial and subsequent 'run
 11 around' caused a direct financial harm that the Plaintiff is still reeling from, to this
 12 day, despite his continuing efforts to not make that so." (Dkt. No. 118 at 3.) However,
 13 this single conclusory statement is unsupported by any admissible evidence (Plaintiff
 14 does not present any competent evidence in the form of affidavits, declarations, or
 15 documents that are authenticated to support this claim) and thus fails to create a
 16 genuine issue of material fact. (Dkt. No. 118 at 3.)

17 As to the second factor regarding investment-backed expectations, Plaintiff's
 18 Opposition also does not set forth any statement of fact or evidence regarding
 19 investment-backed expectations. Plaintiff cites to *Palazzolo v. Rhode Island*,
 20 533 U.S. at 632 (2001) ("*Palazzolo*"), arguing that "Plaintiff has the Constitutional
 21 right to challenge a government-imposed restriction irrespective if that restriction was
 22 recorded before or after the acquisition of the Property in this controversy." (Dkt. No.
 23 118 at 13.) But this single conclusory statement is also unsupported by any evidence
 24 and thus fails to create a genuine issue of material fact. In *Palazzolo*, the Supreme
 25 Court held that "acquisition of title after the effective date of [a] regulation[]," alone,
 26 will not preclude a takings claim. (533 U.S. at 632 (2001).) Central to this holding
 27 was the notion that certain land use restrictions "are unreasonable and do not become
 28 less so through passage of time or title." (*Id.* at 627.) But "a prospective enactment,

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1 such as a new zoning ordinance, can limit the value of land without effecting a taking
 2 because it can be understood as reasonable by all concerned." (*Id.*) Thus, contrary to
 3 Plaintiff's contentions, "the regulatory regime in place at the time the claimant
 4 acquires the property at issue helps to shape the reasonableness of those [distinct
 5 investment-backed] expectations." (*Id.* at 633. (O'Connor, J., concurring); *see*
 6 *also* *Murr v. Wisconsin*, 137 S. Ct. at 1945–46, 1949 ("Petitioners cannot claim that
 7 they reasonably expected to sell or develop their lots separately given the regulations
 8 which predated their acquisition of both lots." (emphasis added).)

9 Plaintiff's argument that he can challenge any government-imposed restriction
 10 is inapposite as to whether or not he had reasonable investment-backed expectations.
 11 Courts consistently reject regulatory takings claims where the plaintiffs bought vacant
 12 land for long-term speculative investment purposes and, as such, had no reasonable
 13 or distinct investment-backed expectations. "Distinct investment-backed
 14 expectations implies (sic) reasonable probability,... Not starry eyed hope of winning
 15 the jackpot if the law changes." (*Marina Point Dev. Assoc. v. County of San*
 16 *Bernardino*, 2020 WL 5163577, *6 (C.D. Cal. May 18, 2020), quoting *Bridge Aina*
 17 *Le'a, LLC v. State Land Use Comm'n*, 950 F.3d 610, 631, 633 (9th Cir. 2020); *see*,
 18 *also*, *City of Los Angeles v. Lowensohn*, 54 Cal.App.3d 625, 636 (1976) (rejecting
 19 takings claim for precondemnation damages where plaintiffs bought vacant land as
 20 an investment: "In sum, appellants sought recovery for something that was
 21 nonexistent in fact and constituted pure fiction. There is no recovery via
 22 condemnation for the taking of a pipe dream.".)

23 It remains undisputed that Brown did not have a reasonable investment-backed
 24 expectation that a solar farm would be allowed to be built on the Subject Property
 25 because on the date the Subject Property was purchased and transferred on November
 26 12, 2020, there was constructive notice that Plaintiff would not be able to build a solar
 27 farm on the Subject Property. This is evidenced by the Tract No. 33128, recorded on
 28 December 21, 1987 which gave the County of Los Angeles the right to prohibit

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1 construction of residential and/or commercial structures within Lot 3, which would
 2 include solar farms and *Los Angeles County Code Section 22.140.510C.5.a* which
 3 prohibits installation of solar farms (such as the one in Plaintiff sought to build) within
 4 a Significant Ecological Area ("SEA") – the prohibition of the solar farms within a
 5 SEA first went into effect on June 25, 2018. (*See Dkt. No. 82-3 Exh. 2 Grant Deed;*
 6 *Dkt. No. 82-6, Exhibit 5 to MSJ, RJN#5, Tract No. 33128, recorded on December 21,*
 7 *1987, Record #87-2026009; Dkt. No. 82-8, Exhibit 7 to MSJ, RJN#7, Los Angeles*
 8 *County Code Section 22.140.510.C.5.a, which currently prohibits installation of solar*
 9 *farms within a SEA; and Dkt. No. 82-9, Exhibit 8 to MSJ, RJN#8, Los Angeles*
 10 *County Code Section 22.52.1605.E.1 on June 25, 2018, which prohibits installation*
 11 *of solar farms within a SEA.)* Plaintiff has not provided any admissible evidence to
 12 show that his distinct investment-backed expectations were reasonable in light of the
 13 material facts. Plaintiff's Opposition does not discuss the third *Penn Central* factor.

14 Lastly, Plaintiff attempts to argue that since he never alleged the acquisition
 15 date of the Subject Property in the Complaint that in itself creates a genuine issue of
 16 material fact that is in dispute. (Dkt. No. 118 at 8.) However, the grant deed and
 17 quitclaim deed for the Subject Property that were publicly recorded clearly show the
 18 date of transfer and ownership of the Subject Property, specifically, that on November
 19 12, 2020 it was transferred from Tax Deed Enterprises, LLC to Atlas LLC and on
 20 January 28, 2022 15% of the Subject Property was transferred from Atlas LLC to
 21 Steve Weera Tonasut, Trustee of the Tonasut Family Trust. (*See Dkt No. 82-2 Exh.*
 22 *1 Quitclaim Deed; and Dkt. No. 82-3 Exh. 2 Grant Deed.)*

23 In sum, Plaintiff's federal takings claim fails as a matter of law because Brown
 24 fails to raise triable issues of material fact that are supported by admissible evidence.

25 **V. CONCLUSION**

26 Defendant requests the Court grant summary judgment in full as Plaintiff fails
 27 to respond to some arguments, do not raise any genuine issues of material facts as to
 28 others, and do not overcome the Defendant's arguments as a matter of law.

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1 DATED: January 17, 2024

Respectfully submitted,

2 HURRELL CANTRALL LLP

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4
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